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DEPARTMENT OF HUMAN SERVICES
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April 3, 2009

GENERAL LETTER NO. 16-G-AP-25

ISSUED BY: Bureau of Protective Services,
Division of Children and Family Services

SUBJECT: Employees' Manual, Title 16, Chapter G, ***DEPENDENT ADULT PROTECTIVE SERVICES APPENDIX***, page 18, revised; and the following forms:

470-0627 *Dependent Adult Abuse Report Request for Extension*, revised
Comm. 96 ***Dependent Adult Protective Handbook***, Contents (pages i and ii), revised; pages 8, 9, 15, 41, 42, and 43, revised; and pages 8a and 40b, new.

Summary

This chapter is revised to:

- ◆ Add "Waiting for financial records" on Form 470-0627, *Dependent Adult Abuse Report Request for Extension*, to the reasons a worker may be requesting an extension.
- ◆ Add instructions for form 470-0612, *Request for Dependent Adult Abuse Registry Information*, as a reminder not to release the social security numbers of either the dependent adult or the person responsible for the abuse.
- ◆ Change Comm. 96 to:
 - Revise guidelines for determining if a person is a caretaker for a dependent adult. Add information concerning caretakers who may be serving as power of attorney for health care dependent adults who may be violating the law. Unless they are related to the third degree of consanguinity with the dependent adult, by law they may not provide care and also serve as power of attorney for the dependent adult.
 - Revise suggested questions to consider when determining if an allegation of exploitation meets criteria for acceptance for an evaluation of abuse.
 - Revise and add to factors necessary for founding an evaluation of exploitation and add to the decision-making question to consider when founding exploitation.

"Other" has been added on Form 470-0688, *Dependent Adult Abuse Evaluation or Assessment Report*, to choices in the dropdown box for the dependent adult's current living arrangement.

Effective Date

Immediately.

Material Superseded

Remove the following pages from Employees' Manual, Title 16, Chapter G, Appendix, and destroy them:

<u>Page</u>	<u>Date</u>
470-0627 (after p. 16)	8/07
18	February 17, 2004
Comm. 96	
Contents (page i and ii)	July 2008
8, 9	July 2004
15	July 1998
40a (reissued)	June 2006
41	July 1998
42	October 1999
43	July 1998

Additional Information

Refer questions about this general letter to your area social work administrator.

Iowa Department of Human Services

Dependent Adult Abuse Report Request for Extension

Worker	County
Registry #	Dependent Adult

An extension of the due date for the above *Dependent Adult Abuse Report* is requested for _____ days. The report will be completed on _____.

The extension is needed because:

- ☐ Law enforcement or therapist recommends a delay interviewing a subject of the report.
- ☐ Necessary medical, psychological, or financial information is not yet available.
- ☐ A subject or significant collateral source is unavailable for an interview. (There has to be a reasonable possibility an interview can be arranged.)
- ☐ Recently acquired information necessitates additional evaluation or assessment and interviews.
- ☐ Unexpected circumstances result in worker or supervisor being unavailable (illness, emergencies).

Worker's Signature

Date

☐ Approved ☐ Rejected

Supervisor's Signature

Date

[Request for Dependent Adult Abuse Registry Information, Form 470-0612](#)

Purpose	Form 470-0612 is provided for authorized persons to request information from the Central Abuse Registry.
Supply	DHS staff may complete this form on line using the template in Outlook or print or photocopy the form from the sample in the manual.
Completion	The person requesting information concerning a dependent adult that has been reported as abused completes this form.
Distribution	Send the form to the Registry for approval before releasing dependent adult abuse information, except when information is needed immediately as provided in 16-G, Requests for Dependent Adult Abuse Information .

The Registry completes the form indicating approval or denial of the request. The Registry returns the form to the requestor when:

- ◆ The request is an employment check, or
- ◆ The local office no longer has a copy of the report, or
- ◆ The request is delivered personally to the Registry, or
- ◆ The request is denied.

For other requests, the Registry returns the form to the local office. The local office provides the information that has been authorized for release to the person making the request.

Note: Do not release the social security numbers of either the dependent adult or the person responsible for the abuse. Delete them when you release a copy of form 470-0688, *Dependent Adult Abuse Evaluation or Assessment Report*.

Data	<p>The requester completes:</p> <ul style="list-style-type: none">◆ Name, phone number, and address of the requestor.◆ Position and basis for authorization to receive the information.◆ First, middle, and last name of the person the request is about.◆ That person's maiden name or alias.◆ That person's social security number, birth date, and address.◆ The reason for the request.◆ The date and the requestor's signature.
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Suggestions:

- ◆ Contact the mandatory or permissive reporter who made the original report by phone to assist with determining if the person is dependent.
- ◆ Consider if the person's behavior is a result of a mental or physical condition or a conscious life style choice, with an understanding of the consequences.
- ◆ Determine if the person is capable of making decisions.
- ◆ Decide if the person's basic human needs are being met.

If you can reasonably determine from the information given by the reporter that the adult is not dependent, the report is not an appropriate referral for dependent adult abuse. You may refer this matter to services, if a service need is identified.

If there isn't enough information to determine that the adult is **NOT** dependent, it may be necessary to accept the referral. If at any point you determine that the adult is not dependent, the evaluation or assessment must be concluded as an **UNFOUNDED** report. You may refer this matter to services, if a service need is identified.

Determining Who Is a Caretaker

If Caretaker Is Responsible for Abuse (Evaluation)

A "caretaker" is a related or unrelated person who has the responsibility for the protection, care, or custody of the dependent adult as a result of:

- ◆ **Assuming the responsibility voluntarily.** A person who occasionally runs errands or does nonessential tasks for a dependent adult is not considered a caretaker. However, if someone provides a needed service, such as a meal every evening, and the dependent adult depends on the person to provide that meal, then the person is considered to have "assumed the responsibility" of providing the meal and therefore is a caretaker.
- ◆ **A contract.** A person who signs a contract to provide some type of needed service to a dependent adult in return for something else, such as payment or use of something, such a room, is considered to be a caretaker.
- ◆ **Employment.** A person employed specifically for the purpose of providing a needed service to a dependent adult is a caretaker.
- ◆ **An order of the court.** A person who has an "order of the court" is a caretaker. A person who is a substitute decision maker in any capacity is a caretaker. Examples are: power of attorney, power of attorney for health care decisions, guardian, or conservator.

Persons who are ordered by the court to be substitute decision makers for a dependent adult may present themselves as being able to do whatever they wish to or for the dependent adult. However, these persons are designated as caretakers for the purposes of Iowa Code 235B and are subject to the dependent adult abuse laws as are all other persons determined to be caretakers for the purposes of this law.

To determine whether or not a person is a caretaker, consider the following:

- ◆ If the caregiver stopped providing care, would minimal essential human needs go unmet by the dependent adult?
- ◆ Would the dependent adult be at risk of injury or harm, if the caregiver discontinued care?

If you can reasonably determine that the caretaker does not meet the Iowa Code definition of caretaker, the report is not an appropriate referral for a dependent adult abuse evaluation. You may refer this matter to services, if a service need is identified.

NOTE: A caretaker who has the power of attorney for health care decisions and is not a relative may be violating Iowa Code Section 144B.4, which states:

“The following individuals shall not be designated as the attorney in fact to make health care decisions under a durable power of attorney for health care:

- ◆ A health care provider attending the principal on the date of the execution.
- ◆ An employee of a health care provider attending the principal on the date of execution unless the individual to be designated is related to the principal by blood, marriage, or adoption within the third degree of consanguinity.”

If you discover a caretaker whom is not a relative as described above and is acting as power-of-attorney for health care decisions for a dependent adult, notify the county attorney. **This does not apply to power of attorney for financial matters.** There is no legal prohibition against caretakers having power of attorney for financial matters, whether related or not.

If Dependent Adult Is Responsible for Self-Denial of Critical Care (Assessment)

To determine whether the dependent adult is responsible for self-denial of critical care, consider the following:

- ◆ Consider if the dependent adult is at substantial risk of injury or harm by failing to adequately meet minimal essential human needs in the following areas: food, shelter, medical care, money management, or mental health care.
- ◆ Determine if a significant incident occurred that brought inadequacies to the attention of the reporter, or if there is a pattern of the dependent adult being responsible for self-denial of care.
- ◆ A dependent adult has the right to make unhealthy choices, as long as they are not health or life-threatening. Living in a dirty house or eating junk food is not self-denial of critical care, unless it is a danger to the health or safety of the dependent adult.
- ◆ If you determine that the dependent adult is not responsible for self-denial of critical care, this is not an appropriate referral for a dependent adult abuse assessment. It may be appropriate to refer the reporter to services or to other community resources.

Exploitation

For a situation to be reportable as exploitation, the reporter must reasonably suspect that **three factors** are present. They are:

- ◆ The alleged victim is a **dependent adult**.
- ◆ The dependent adult was **exploited**. “Exploitation” means the act or process of taking unfair advantage of a dependent adult or the dependent adult’s physical or financial resources for one’s own personal or pecuniary profit, without the informed consent of the dependent adult, by the use of theft, undue influence, harassment, duress, deception, false representation, or false pretenses.
- ◆ The exploitation occurred as a result of acts or omissions of a responsible **caretaker**.

Suggested Questions:

- ◆ What were the consequences to the dependent adult? What happened to the dependent adult as a result of the transaction?
- ◆ What was the dependent adult’s understanding of what was to happen or how the money or resources were to be spent or used?
- ◆ Were the resources used to the benefit of the dependent adult?
- ◆ In what way did the transaction benefit the alleged perpetrator?
- ◆ What is the relationship between the dependent adult and the person who has control of the resources or took advantage of the dependent adult?
- ◆ Did the dependent adult feel threatened to participate in the transaction?
- ◆ Did the person suspected of exploiting the dependent adult provide alternatives to the transaction?

SEXUAL ABUSE: RESOURCES AND DECISION-MAKING QUESTIONS

You may need assistance to make credible observations, decisions, and choices on whether a report of sexual abuse can be founded. The following is a list of resources:

- ◆ Attorney
- ◆ County attorney
- ◆ Credible witness
- ◆ Educator
- ◆ Homemaker
- ◆ Hospital records
- ◆ Law enforcement
- ◆ Mental health worker
- ◆ Multidisciplinary team
- ◆ Other medical records and reports
- ◆ Other physical evidence
- ◆ Physician
- ◆ Psychiatrist
- ◆ Psychologist
- ◆ Scholarly journals
- ◆ Sexual assault kit
- ◆ Textbooks or other educational materials
- ◆ Visiting nurse

Someone who works with person with specific challenges (such as mental retardation), might be helpful in conducting the interview.

Decision-Making Questions:

- ◆ Does the victim understand the consequences of the act?
- ◆ Is the victim capable of consenting to sex?
- ◆ Does the victim have reason to have knowledge of sexual behavior?
- ◆ Were there any injuries?
- ◆ Were there any threats?

FOUNDED EXPLOITATION

For a situation to be founded exploitation, the report must include credible evidence of **five** factors. They are:

Factor 1. The victim is a **dependent adult**. (The victim must be dependent at the time of the exploitation.)

Factor 2. The exploitation happened as a result of acts or omissions of a **caretaker**.

Factor 3. A dependent adult or the dependent adult's physical or financial resources were **taken advantage of** by an alleged perpetrator. Credible evidence may include any of the following:

- ◆ Information provided by a credible person that the dependent adult was:
 - Taken advantage of by the perpetrator, or
 - Unduly influenced by the perpetrator, or
 - Harassed by the perpetrator, or
 - Under duress (compulsion by threat) by the perpetrator, or
 - Deceived by the perpetrator, or
 - Falsely represented by the perpetrator, or
 - The perpetrator acted under false pretenses (claim not supported by fact)
- ◆ Evidence the dependent adult was taken advantage of or the dependent adult's physical or financial resources were not used to benefit the dependent adult.
- ◆ Evidence that a perpetrator who has legal responsibility for the dependent adult's physical or financial resources (such as conservator, payee, power of attorney) is abusing that legal responsibility.

Factor 4. A dependent adult **did not give informed consent** to the use of the dependent adult's physical or financial resources or to the transaction when the dependent adult was taken advantage of by the perpetrator.

The dependent adult did not agree to allow something to happen that was based on a full disclosure of known facts and circumstances needed to make the decision intelligently. The dependent adult did not have knowledge of risks involved or alternatives.

Credible evidence may include Information provided by a credible person that the dependent adult agreed to the transaction when the dependent adult was taken advantage of or to have the dependent adult's resources used without:

- ◆ Understanding the consequences of the transaction.
- ◆ Understanding how the money or resources would be used.
- ◆ Being told what the consequences of the transaction would be.
- ◆ Being told how exactly the money or resources would be used.
- ◆ Being given alternatives for the transaction that would not take advantage of the dependent adult.
- ◆ Being given alternative uses for the money or resources.
- ◆ Being told the risks involved in the transaction that would take advantage of the dependent adult.
- ◆ Being told the risks involved in using the money or resources.

Factor 5. The transaction was for the personal or pecuniary profit of the perpetrator.

Credible evidence may include information provided by a credible person including:

- ◆ The transaction was for the personal or financial profit of the perpetrator.
- ◆ The perpetrator would gain something from the transaction and the dependent adult would lose something personal or financial.

Resources

- ◆ County attorney, law enforcement, and clerk of court
- ◆ Social Security, Veterans Administration, retirement or pension records
- ◆ Bank statements and other financial records (including bills)
- ◆ Family attorney or accountant
- ◆ Area agency on aging
- ◆ DHS income maintenance workers
- ◆ Consumer protection through the Attorney General's office
- ◆ Long-term care ombudsman through the Department of Elder Affairs
- ◆ Legal Services Corporation of Iowa or Iowa Protection and Advocacy Services, Inc.

- ◆ Mental health expert to determine dependent adult's capability of comprehending financial transactions or other transactions that would take advantage of the dependent adult.
- ◆ Office of Substitute Decision Maker

Decision-Making Questions

- ◆ What did the dependent adult understand about how the money was to be spent?
- ◆ Were the resources used to the benefit of the dependent adult?
- ◆ What is the relationship between the dependent adult and the person who has control of the resources?
- ◆ What did the dependent adult understand about the transaction that took advantage of the dependent adult?
- ◆ Were there alternatives that were not explained to the dependent adult?
- ◆ In what way was the transaction for the personal or pecuniary benefit of the perpetrator?

It is not necessary to prove that the dependent adult was harmed or that basic needs were not met.